IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3363 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHSIN YASIN AKUKARA

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner

MR ST MEHTA, APP for Respondent No. 1

MR SUNIL C PATEL for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/08/2000

ORAL JUDGEMENT

Rule. Learned APP, Mr S.T. Mehta waives service of rule on behalf of the respondent no.1 State. Learned

Advocate, Mr. Sunil C. Patel, appearing for respondent no.2, waives service.

The petitioner has prayed to quash and set aside the order passed by the Learned Chief Judicial Magistrate, Navsari on 13-6-2000 in the proceedings of Misc. Criminal Case No.43/2000 along with the complaint filed by present respondent no.2

The respondent no.2 has filed Misc. Criminal Case No.43/2000 against one M/s.Nigar Fashion Private Limited and three others, where the present petitioner is shown to be as accused no.2. It is avered and alleged in the complaint that the complainant has been dealing in the business of supplying lignite in the name and style of M/s.Padmavati Sales Agency. That the accused, as described in the complaint at the relevant time, were dealing from G.I.D.C., Kabilpore, in the name and style of M/s.Padmanath Silk Mills Dying Printing. It is, further, alleged that the accused have purchased goods of lignite from the complainant in October, 1999, according to their requirement and have assured them to pay the cost within 30 (thirty) days. The complainant has given details of various bills regarding sales and supply of goods to the accused in between 27-10-1999 to 20-12-1999 for aggregate amount of Rs.4,44,818/-. The complainant has, further, alleged that the accused having received the goods, had failed to pay the price of the deal within 30 days as assured earlier and as such an aggregate amount of 3,01,354/- had remained due and payable by the accused. That despite repeated demands the accused have failed to pay the amount. However, subsequently cheques bearing nos.118178 and 118179, drawn on State Bank of Bikaner and Jaipur, Surat Branch for Rs.25,000/- each were issued in favour of complainant, covering the part payment of outstanding dues. That both the said cheques when presented for discounting have returned dishonoured with a remark of "insufficient funds". It is alleged that on intimation given to the accused, the accused have given evasive reply. Not only that, but have threatened with dire consequences if demand is made to them. The complainant has also avered and contended that the accused have also purchased goods from various other merchants dealing in the business at Navsari and have failed to discharge obligation of making payments due. Under the circumstances, the accused have committed act of cheating him and thereby complaint is filed. That the Learned Cheif Judicial Magistrate has referred the matter for further investigation to Incharge of Navsari Rural Police Station under Section 156(3) of Code of Criminal Procedure 1973, hereinafter referred to as 'the Code'.

The petitioner has contended that initially the petitioner was one of the Directors of M/s.Nigar Fashion Pvt. Ltd., and he has ceased to be a Director of the company with effect from 1-12-1999. The petitioner has produced document at Annexure "A" to show that he has ceased to be a Director of the said company and the extract issued by Registrar of Companies. The petitioner has contended that there was no direct dealing with the present petitioner and the complaint on behalf of the accused no.1 company, Nigar Fashion Pvt. Ltd., and as such petitoner cannot be liable for any offence as alleged in the complaint. In the back-drop of such facts, the petitioner has prayed that the proceedings of the said complaint along with the order of the Learned C.J.M. - Navasari regarding investigation be quashed under 482 of Cr.P.C.

Learned Advocate, Mr Sunil C. Patel appearing for Respondent no.2 has streneously argued and contended that the perusal of complaint suggests that petitioner is included in the term accused as used in the complaint and thereby it is implied that representation made to purchase the goods included a representation made by the accused no.2, the present petitioner and thereby Court should not interfere at this stage of investigation. In order to support the submission, Mr.Patel has reffered to and relied on the observations made by this Court in the matter of Criminal Revision Application No.143/1997 decided with Criminal Application No.395/1997 on 16-6-2000 (Coram A.L. Dave, J.).

On perusal of the judgement, it appears that in the said matter Court was required to determine the liability of the Director on behalf of the company under Section 141 of Negotiable Instrument Act, 1881 and in the context of the provision under Section 141, the Court has held that the Director at the time of issuance of the cheque is liable under Section 138 of the Negotiable Instrument Act, if the cheque is dishonourned for the reasons of insufficient fund. Under the circumstances and in the facts of the matter, the said observations have no application to the present matter.

Learned Advocate, Mr Patel has also referred to and relied on observations made by Supreme Court in the matter of Jehan Singh Vs. Delhi Administration reported vide AIR 1974 SC 1146. Mr.Patel has referred to and relied on observations made in head-note 1-A. Perusal of the said observations ex facie suggests that it cannot have application to the present matter because in the

said matter the Court elucidated the proposition that adjudication under Section 561-A of Code 1898 should be sparingly used and cannot be exercised at the stage of investigation by police. The said proposition has no application to the contention urged in the present matter.

Mr.Patel has also referred to and relied on observation made by Supreme Court in the matter reported vide AIR 1992 SC Page 1930 in the matter of M/s.Jayant Vitamins Ltd. Vs Chaitanyakumar and another. In the said matter, the Supreme Court has observed that investigation is a statutory function of the police and quashing the proceedings at investigation stage is not proper by the High Court. However, the said observations are made in connection with the facts involved in the said matter and not by way of general proposition of law. Lastly, Learned Advocate, Mr.Patel has referred to and relied on observations made by Supreme Court in the matter of Rajesh Bajaj Vs State NCT of Delhi and others reported in JT 1999(2) SC 112. In the said matter, it has been held that if a representation is made by the accused to make payment of goods on receipt of invoice and accused has received the goods and made only part payment, the offence of cheating could be alleged and FIR for such offence cannot be quashed in exercise of power under Section 482 of Cr.P.C. or Article 226 of the Constitution. The said observations have also no application to the present case, because a copy of the complaint produced at Annexure "B" clearly points out that nowhere the complainant has referred to any dealings between the complainant and the present petitioner. In view of the above facts and circumstances, merely at one stage of time, if the petitioner was Director of the accused-company Nigar Fashion Pvt. Ltd., no criminal liability as alleged in the complaint for making the non-payment of goods received on credit can be fastened on the petitioner. If such complaint is sent for investigation, it amounts to abuse of power and hence, in the interest of justice, it is necessary to interfere with the same.

In view of the above said discussion the petition is allowed. The main proceedings of Criminal Complaint Case No.11/2000 registered at Navsari Rural Police Station along with the order of Chief Judicial Magistrate to investigate the same qua the present petitioner Mohsin Yasin Akukara (Original accused no.2) only is quashed and set aside. Rule is made absolute to that extent.

10-8-2000 (A. K. Trivedi, J.)

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